



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

Agency Name:	State Water Control Board
VAC Chapter Number:	9 VAC 25-195-10 et seq.
Regulation Title:	General VPDES Permit Regulation for Concentrated Aquatic Animal Production Facilities
Action Title:	Reissue Existing Regulation
Date:	July 1, 2002

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary*

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The State Water Control Board proposes to amend the VPDES General Permit Regulation for Concentrated Aquatic Animal Production Facilities in order to reissue the general permit for another five year term. The reissued general permit will replace current General Permit VAG13 which will expire on March 5, 2003. The existing regulation sets forth guidelines for the permitting of wastewater discharges from fish farms and hatcheries and establishes limitations and monitoring requirements for flow, total suspended solids and settleable solids. The regulation also sets forth the minimum information requirements for all requests for coverage under the general permit. No significant changes to the existing regulation are proposed in this amendment.

Basis*

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

The basis for this regulation is § 62.1-44.2 et seq. of the Code of Virginia. Specifically, § 62.1-44.15(5) authorizes the Board to issue permits for the discharge of treated sewage, industrial wastes or other waste into or adjacent to state waters and § 62.1-44.15(7) authorizes the Board to adopt rules governing the procedures of the Board with respect to the issuance of permits. Further, § 62.1-44.15(10) authorizes the Board to adopt such regulations as it deems necessary to enforce the general water quality management program, § 62.1-44.15(14) authorizes the Board to establish requirements for the treatment of sewage, industrial wastes and other wastes, § 62.1-44.16 specifies the Board's authority to regulate discharges of industrial wastes, § 62.1-44.20 provides that agents of the Board may have the right of entry to public or private property for the purpose of obtaining information or conducting necessary surveys or investigations, and § 62.1-44.21 authorizes the Board to require owners to furnish information necessary to determine the effect of the wastes from a discharge on the quality of state waters. Section 402 of the Clean Water Act (33 USC 1251 et seq.) authorizes states to administer the NPDES permit program under state law. The Commonwealth of Virginia received such authorization in 1975 under the terms of a Memorandum of Understanding with the U.S. EPA. This Memorandum of Understanding was modified on May 20, 1991 to authorize the Commonwealth to administer a General VPDES Permit Program. The Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

Purpose*

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

This regulation amendment is proposed in order to reissue the existing general permit which expires on March 5, 2003.

Substance*

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

The general permit will establish limitations and monitoring requirements for point source discharges from fish farms and other aquatic animal production facilities. As with an individual VPDES permit, the effluent limits in the general permit will be set to protect the quality of the waters receiving the discharges. No significant changes to the existing general permit have been identified at this time.

Issues*

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

The primary advantage of this regulatory action to the public and to the agency is the continuation of a general permit, which provides a simpler option for obtaining VPDES permit coverage where appropriate. There are no disadvantages to the public or Commonwealth.

Locality Particularly Affected*

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

This regulation will be applied uniformly throughout the Commonwealth and will not impact any one locality.

Public Participation*

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal.

The Board is seeking comments on the intended regulatory action, including (i) ideas to assist in the development of a proposal, (ii) the costs and benefits of the alternatives stated in this notice or other alternatives and (iii) impacts of the regulation on farm or forest lands. Anyone wishing to submit written comments for the public comment file may do so at the public hearing, by mail to Michael B. Gregory, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240, by fax to (804) 698-4032, or by email to mbgregory@deq.state.va.us. Written comments must include the name and address of the commenter. In order to be considered comments must be received by the close of the comment period.

A public hearing will be held and notice of the public hearing can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; (e) the projected cost of the regulation for affected individuals, businesses, or other entities; and f) an estimate of the impact of the proposed regulation upon small businesses as defined in § 9-199 of the Code of Virginia or organizations in Virginia.

The cost to continue implementation and enforcement of the regulation should not cause any additional financial impact to the state, localities or public.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

9 VAC 25-195-30 was changed to add clarification that general permit coverage can not be extended to facilities contributing to water quality impairment on waters listed as impaired on the Commonwealth's impaired waters list that is required by §303(d) of the federal Clean Water Act. Other changes were editorial.

Alternatives

Please describe the specific alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

The alternative to the proposed reissuance is to do nothing, which will allow the general permit to expire. In that case individual VPDES permits would have to be issued to all facilities covered by the general VPDES permit. The agency believes continuation of the existing general permit is the least burdensome alternative.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

Comments received during the NOIRA comment period were:

Three comments requested that the general permit be reissued with no changes;

One comment supported reissuance of the general permit but expressed concern with facilities on impaired waters.

Agency Response:

Only minor changes have been made to the reissuance draft permit;

The regulation has been modified to clarify that facilities discharging to impaired waters may not obtain coverage under the general permit.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

Through examination of the regulation and relevant public comments, the agency has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

The agency will initiate a review and re-evaluation of this regulation to determine if it should be continued, amended or terminated within three years of the effective date of the regulation.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

It is not anticipated that this regulation will have a direct impact on families.